In The

Supreme Court of the United States

78-981

October Term, 1978

No.

BRUCE and RUTH GRAVES,

Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

The petitioners, Bruce and Ruth Graves, respectfully pray that a writ of certiorari be issued to review the judgment, opinion and final order of the United States Court of Appeals for the Sixth Circuit denying petitioners' petition for rehearing, entered in this proceeding on September 19, 1978.

OPINIONS BELOW

The opinion and judgment of the Court of Appeals, reported at 579 F.2d 392, appears in Appendix II hereto. The final order of the United States Court of Appeals appears in Appendix III hereto. The opinion and judgment of the United States Tax Court is set forth in T.C. Memo 1976-353 and appears in Appendix I hereto.

JURISDICTION

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on July 7, 1978. On September 19, 1978 a petition for rehearing was denied by order of the United States Court of Appeals for the Sixth Circuit after a timely petition pursuant to Rule 20 of the Federal Rules of Appellate Procedure was filed on August 3, 1978. This writ was filed within 90 days of that date. The Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

QUESTIONS PRESENTED

Whether the refusal of the petitioners to sign an Internal Revenue form, where a legally-owed tax had been paid and no statutory authority was alleged to have been violated, constitutes a deficiency for which the petitioners are liable?

Whether compelling the petitioners to pay income tax deficiencies and penalties as aforesaid above constitutes an abridgment of the free exercise of their religion under Amendment I of the United States Constitution?

Whether the protection of the free exercise clause of the United States Constitution is superseded by the rules and regulations of the Internal Revenue Code in the absence of statutory authority to the contrary?

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

Amendment I to the United States Constitution. Rule 120 of the United States Tax Court Rules of Practice and Procedure. Proposed World Peace Tax Fund Act (HR. 4897, S.880). Selective Service Act, 50 U.S.C.A. App. 451. 28 U.S.C. Section 1254(1).

STATEMENT OF THE CASE

This writ arises from the opinion, judgment and order of the United States Court of Appeals for the Sixth Circuit (App. II, III) affirming a decision of the United States Tax Court, Docket No. 77-1188 (App. I) in favor of the Commissioner of Internal Revenue (hereinafter referred to as the respondent) against Bruce and Ruth Graves (hereinafter referred to as the petitioners) in Docket No. 5057-75.

Petitioners are Quakers, pacifists and conscientious objectors. Petitioner Ruth Graves was a childhood victim of Nazi oppression in Germany. Like many fellow refugees who came to the United States to flee Hitler, she was convinced that the United States was the repository of cherished freedoms codified in the First Amendment protections of the United States Constitution. She has since become gradually disillusioned and finds that freedom of religious conscience in respect to war-making has been eroded over the years just as it was in the crucial years before the fall of the Weimar Republic and the advent of German militarism.

Petitioner Bruce Graves grew up in Indiana as the youngest son of pacifist Quaker parents. His older brother was jailed for his pacifist beliefs under one selective service law and was placed in a Civilian Public Service Camp under another. Petitioner was a conscientious objector and served with an American Friends Service Committee institutional service unit.

Upon marriage, petitioners intended to continue the practice of their religious beliefs but their bodies were no longer demanded for war. Their dollars were. They gave money each year in the form of their income taxes to buy the tools of war even though they did not believe in killing. But warfare reached a point of such automation where militarism increasingly permeated national policy, that the idea of the financing of the arms race became unbearable. The government relies far more on the expenditure of tax money than on the conscription of lives. It now appears that conscientious objection itself is tending towards irrelevance unless the concept is expanded beyond the confines of the selective service system (especially for those over draft age) to the system which they now contend with, the Internal Revenue Service.

Petitioners at this point converted their tax returns into a document which they could in conscience sign and remitted checks into contracts with the Internal Revenue Service. Each year the item, Foreign Tax Credit, was converted into War Tax Credit and about 50% of the normal tax due was entered on the form. Carrying that credit over to the first page as instructed, petitioners showed each year on their returns the balance due to them from the Internal Revenue Service. The tax owed was calculated correctly and paid but petitioners' check required the Internal Revenue Service to promise to refund the war tax claimed by an endorsement due to a restrictive clause placed on the back of the check. The clause referred to and made a part thereof, the tax return to which the check was attached. The Internal Revenue Service, rather than return a refund, sent petitioners a notice to sign a document correcting their return. Petitioners refused to sign said document because this would mean, according to their conscience, that they were agreeing to the original war tax. In any case the Internal Revenue Service cashed the checks, and according to the I.R.S. placed some of them in a special credit balance account.

The petitioners' appeal to this Court from the opinion and judgment of the United States Court of Appeals for the Sixth Circuit and the order entered on September 19, 1978 (App. II, III). The opinion and judgment affirmed the decision of the United States Tax Court in favor of the respondent. That Court, in a memorandum opinion filed on November 22, 1976 and an order and decision entered on November 23, 1976 (App. I), granted the motion of the Commissioner of Internal Revenue for judgment on the pleadings with respect to a deficiency of $4,051 in petitioners' federal income tax for 1973. This case thus arises in the context of the government's efforts to levy a deficiency assessment in the amount of $4,051 against petitioners. In their Tax Court petition, petitioners alleged that: (1) the respondent has not recognized constitutionally protected freedom of religious conscience that stipulates conscientious objection to participation in or payment for war; (2) petitioners are religious pacifists, and that religious pacifists may regard payment for war taxes as a war crime depending upon individual conscience; and (3) in the event no war tax credit refund is made the collection of this war tax from a conscientious objector for failure to sign an I.R.S. document in the absence of notice to petitioner of the statutory authority relied upon by respondent would be unconstitutional in violation of the First Amendment. *(Petitioners Petition to the Tax Court,* p. 3).

The Tax Court memorandum opinion made several findings with respect to petitioners' moral, ethical and religious opposition to participation to war in any form. It found that "Petitioners specifically abjure a posture of objection to particular wars. . . . Rather their protestations are aimed at all war and preparations therefor, since these 'involve injuring or killing human beings.' They (Petitioners) have long been active Quakers and they adhere devotedly to the principles of total nonviolence espoused by the Society of Friends. . . . [W]e do not doubt the sincerity of Petitioners' beliefs." (App. I, p. 2a,-6a).

Nonetheless on the basis of these facts and findings the Tax Court decided that there was a deficiency of $4,051 in petitioners' federal income tax for the year 1973. It granted respondent's motion for a judgment on the pleadings on the basis that "there is no genuine issue of material fact" (App. I, p. 1a, fn.1). Petitioners' appealed to the United States Court of Appeals for the Sixth Circuit, *inter alia,* that their First Amendment rights to free exercise of religion were abridged. While petitioners' appeal was pending, petitioners received a "Statement of Tax Due" from respondent calling for the payment of $4,051 in tax and $19.10 in interest. The Court found that "the requirement that Petitioners, along with others having taxable income, pay taxes thereon does not constitute an unreasonable burden on the free exercise of their religious beliefs." (App. II, p. 10a). Petitioners thereupon petitioned that Court for a rehearing (App. III, p. 11a) which was denied on September 19, 1978 and it is from that decision and order that this petition ensues.

REASON FOR GRANTING THE WRIT

I.

THE DECISION BELOW, AS IT APPLIES TO PETITIONERS, QUAKERS, CONSTITUTES AN ABRIDGMENT OF THE FREE EXERCISE OF RELIGION UNDER AMENDMENT I OF THE CONSTITUTION OF THE UNITED STATES.

A. Absence of Statutory Authority.

The petitioners find themselves in the highest court of the land because two lower courts have determined that their 1973 income tax was deficient in the amount of $4,051. Uncontested and undisputed in the record from the outset of this case is the fact that the petitioners have not withheld one penny of the taxes due for the year assessed, 1973. The United States government has in its bank the total amount for the tax due that

year. It does not allege that it failed to receive that amount nor has it returned any of that amount to petitioners. Further, the respondent has never notified petitioners of what statute under the Internal Revenue Code they have violated and on what basis the Internal Revenue Service is entitled to $4,051 plus interest. Even though two lower courts have assessed a "deficiency" against petitioners no tax is owing. What does exist is an attempt by the respondent to compel the petitioners to sign a statement attesting to what they actually did, that is, submitted checks equal to a gross tax liability of $8,102 in 1973 even though their income tax form reflected a figure of $4,051. The refusal of petitioners to sign said statement has caused the respondent to pursue an alleged deficiency without pleading any statutory basis.

It is amazing that a case could reach the Supreme Court of the United States without any statutory authority relied upon by a governmental agency in its legal argument in the Tax Court or in its briefs to compel American citizens to pay an amount of money already paid to the respondent simply because their tax form showed a liability of less than the amount they actually paid. At the same time they paid $8,102 to the respondent with a condition written upon the check that $4,051 be refunded to taxpayers as a war tax credit. The respondent has not refunded that amount but has deposited said checks. The respondent could either refund the amount, return the checks or deposit the checks. If it wished to seek a deficiency it should return the checks. If it agrees that no deficiency exists and it wished to honor the refund it could have done so. By depositing the checks, the respondent entered into a contract with petitioners and closed the account on petitioners' 1973 income tax liability regardless of what the petitioners' income tax form stated. If this is not the case, the respondent has not indicated any statutory authority upon which they are proceeding to justify a deficiency and at the same time violate a contract. American law requires at the least statutory notice and authority, and adherence to a contractual obligation assumed in fact or law.

B. Abridgment of Free Exercise Clause.

In the event that petitioners are compelled to pay income tax deficiencies on the basis of the aforesaid, said petitioners' conscientious objection to participation in all wars and payment thereof will have been abridged in respect to their constitutional right of the free exercise of their religion under Amendment I of the United States Constitution. Even assuming respondent's argument that deficiencies are owed by petitioners, even though respondent has deposited the full amount taxable for the year 1973 and has failed to cite any statutory authority upon which further monies are owed, the payment of such war tax money would constitute an abridgment of the free exercise of religion of petitioners. Petitioners are entitled to the overriding constitutional right. The thrust of respondent's argument is that a deduction, credit or omission of income or other adjustment on a federal tax return as an expression of war or other protest is not provided for in the law. It is the position of the petitioners, however, that although such is not provided for in the statutory law or regulatory law it is provided for in the higher law of the Constitution. This higher law, the First Amendment to the United States Constitution states *inter alia* that "congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

1. Paramount interests of respondent are not endangered.

The Supreme Court, while qualifying the First Amendment has interpreted such qualifications narrowly and strictly particularly in regard to federal power since it impedes upon the literal meaning of the phrase and the obvious intention of its framers. "Only the gravest abuses, endangering paramount interest give occasion for permissible limitation." *Sherbert v. Verner,* 374 U.S. 398, 406 (1963); *Thomas v. Collins,* 323 U.S. 516, 530 (1945); *Wisconsin v. Yoder,* 406 U.S. 205 (1972). It is a question of fact whether such grave abuses endangering paramount interests have given occasion for limitation, as

respondent has argued, in this particular case under these particular facts. Without any evidence at the Tax Court level the burden of the government, which shifts to it under this rule of construction, was not met and no grave abuses endangering paramount interests have been presented to any court indicating that the petitioners, Graves, have given any occasion for permissible limitation under the facts of this case.

2. Petitioners' free exercise directly affected.

The lower court placed the burden upon the petitioners to prove that a *direct* effect on the free exercise of petitioners' religious convictions would be the result if the deficiencies assessed petitioners were enforced. This again is an issue of fact, but the Tax Court refused to allow the petitioners to testify that the taxpayer would be directly and not indirectly affected by this imposition. Without taking evidence, and as a matter of law, the Tax Court determined that the First Amendment only restricts the direct infringement of the free exercise of religion. Thus, the Tax Court held that the infringement was not sufficiently direct and ruled in favor of respondent. However, even without the right to testify as to the directness of this effect on petitioners they should still be upheld if only on the indirectness of the effect.

The Supreme Court in *Braunfield v. Brown,* 366 U.S. 599 (1961) stated that "if the purpose or effect of a law is to impede the observance of one or all religions, or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as only being indirect." The Tax Court, arguing from *Muste,* held that the burden was only indirect upon the petitioners. *Muste v. Commissioner,* 35 T.C. 913 (1961). As such, the Tax Court decision violates the requirements of both *Braunfield* and *Sherbert.* If respondent contends that the infringement is not direct but indirect then it is his burden to put on evidence to demonstrate so and this he did not do. If, in fact, the burden is direct, then petitioners should have had the right to put on their

evidence to prove the same. In any case without evidence on either side it seems impossible for respondent to be upheld as a matter of law that an indirect infringement, arguing from *Muste*, can constitute a grave abuse endangering paramount interests, arguing from *Sherbert*. The Tax Court decided that no "unreasonable burden" was put on the petitioners' shoulders. In light of the juxtaposition of these two cases a ruling by the Tax Court that the burden upon the petitioners was not unreasonable, was not only unreasonable but unresponsive to the leading constitutional cases applicable to this situation which turn on more specific criteria.

3. Neutral legislation may be offensive.

The second argument used by the respondent is that the tax laws are *neutral* in respect to all persons in there effect. Therefore they are not violative of First Amendment rights since each taxpayer must pay his fair share. The argument concludes that if the tax is neutral on its face then no constitutional proscription applies. However, the Supreme Court in *Yoder* noted that it did not matter whether the regulations applied equally to all citizens for as the Court observed, "a regulation neutral on its face may, in its application, nonetheless offend the Constitutional requirement for government neutrality if it unduly burdens the free exercise of religion." *Wisconsin v. Yoder*, 406 U.S. 205, 220 (1972). According to *Yoder*, neutrality is not a dispositive argument. In *Murdoch v. Pennsylvania*, 319 U.S. 105 (1943) the Court, in striking down a municipal ordinance which required religious colporteurs to pay a license tax as a condition to pursue their activities, that of selling religious literature of the Church, said:

> "It is true that the First Amendment, like the commerce clause draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes but there is no reason why we should shut our eyes to the nature of the tax and its distinctive influence." 319 U.S. 105 at 313.

4. "Belief-Practice" distinction overruled.

Yoder has also set to rest the so-called "belief-practice" distinction formulated in *Cantwell v. Connecticut*, 310 U.S. 296 (1940) and made it clear that the practice of one's religion in whatever form it took in regard to whatever state activity it implicated could only be abridged by the showing of a compelling government interest that could not be achieved by less drastic means than imposing the restriction in question. The Court said:

> "Our decisions have rejected the idea that religiously grounded conduct is always outside the protection of the free exercise clause. It is true that the activities of individuals, even when religiously based, are often subject to regulation by the states in the exercise of their undoubted power to promote the health, safety and general welfare, of the federal government in the exercise of its delegated powers. But to argue that religiously grounded conduct must often be subject to the broad policy power of the state is not to deny that there are areas of conduct protected by the Free Exercise Clause of the First Amendment and thus beyond the power of the state to control, even under regulations of general applicability." 406 U.S. at 220.

Here we are dealing with a regulation of general applicability and with cases decided upon before the belief-practice distinction was abandoned, chiefly *Autenrieth v. Cullen*, 418 F.2d 586 (9th Cir. 1969), *cert denied*, and therefore those cases are inapplicable to the instant case. In further reference from *Autenrieth* (App. I. p. 4a) the Tax Court argued pragmatic rather than constitutional questions in stating that:

> "If every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money, on religious grounds, the ability of the government to function could be impaired or even destroyed. See, for example, *Crowe v. Commissioner* . . . , 8th Cir. 1968, 396 F.2d 766, where a taxpayer declined to pay his income tax because he objected to being made 'to contribute to the welfare of people who made no effort to support themselves.' There are few, if any, governmental activities to which some person or group might not object on religious grounds." 418 F.2d at 588, 589.

Pragmatic arguments are irrelevant. Even so it has been determined that in the event such tax credit were constitutionally prescribed by the courts or legislatively enacted by Congress, only approximately 0.4% of the population would take advantage of such a credit. (Pet. Trial Memo., p.4).

Moreover, petitioners are not contending that the free exercise clause entitles the citizen to refuse part of the tax liability because of disapproval of any governmental action, but that the religious objector may not be taxed to support the carrying on of war which, unlike any other governmental activity, directly involves the killing of human beings.

5. Alternative forms of regulation available.

This case could have been properly resolved at the Tax Court level upon the standards set down by the Supreme Court in *Sherbert v. Verner, supra.* That case required "the Appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights." 374 U.S. 398 at 407. Petitioners have contended that the World Peace Tax Fund Act (HR. 4897, S.880) has been and

remains a feasible alternative form of regulation. It is possible to maintain the state's interest in taxation without infringing upon the consciences of taxpayers who are conscientiously opposed to participation in war or payment for war.

6. A constitutional right exists.

It was further argued by the court below that the conscientious objectors provision in the Selective Service Act (50 U.S.C.A. app. 451) allowing him to refuse participation in war is based on legislative grace and not constitutional requirement (App. I, p.5a). Petitioners argue that conscientious objection is not a privilege granted by Congress but a right recognized by Congress as *granted* by the constitution. *Hamilton v. Regents of the University of California,* 293 U.S. 245 (1934) stated by way of *dictum* that conscientious objection to war is a matter of legislative grace and not a constitutional right. But, the dissent in *United States v. MacIntosh,* 283 U.S. 605, 632 (1931) held that conscientious objection is a constitutional right. Later, in *American Friends Service Committee v. United States,* 368 F. Supp. 1176 (E.D. Pa. 1973), *rev'd on other grounds,* 419 U.S. 7 (1974), the court held that the government does not have the power under the free exercise clause to compel the withholding of taxes from employees' salaries who were opposed on the basis of their religious conviction to payment for war because this act would violate their First Amendment rights. The court stated that to do otherwise would prevent the employees from bearing witness to their views and that the spending of money for any military purpose is contrary to their religion. The court held that it was not a compelling interest of the government that it would cost additional money to collect taxes if it could not proceed by withholding. The court stated that this "is a small price to pay when compared with the possible frustration of the religious practice of bearing witness to one's conscience." 368 F. Supp. at 1184. Although the case on appeal was reversed on other grounds by the Supreme Court, in respect to the substantive holding of the District Court it was not. Justice Douglas in commenting on that holding stated that the appellants:

> ". . . invoked the free exercise clause of the First Amendment as they are Quakers who are opposed to participation in war in any form and . . . claim that this method of collection directly forecloses their ability freely to express that opposition, i.e. to bear witness to their religious scruples . . . . Quakers with true religious scruples against participation in war may no more be barred from protesting the payment of taxes to support war than they can be forcibly inducted into the armed forces and required to carry a gun, and yet be denied all opportunity to state their religious views against participation." 419 U.S. 7 at 12, 13.

The mere enactment of a legislative provision does not render a pre-existing right no longer a right but only a privilege. *Sherbert, supra,* at 404; *Buckley v. Valeo,* 424 U.S. 1 (1976). The Supreme Court has not held that a constitutional right to war tax refusal does not exist, whatever *dicta* to the contrary. Indeed for these Quakers the "grace" that they uphold is not legislative but amazing.

7. Failure to grant right constitutes establishment of religion.

The fear remaining then is that if this type of free exercise is not recognized as part of petitioners' religious practice, then in effect the failure to grant such a religious exemption constitutes a violation of the establishment clause of the same religious freedom amendment. *Cantwell, supra,* stated that the First Amendment "forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience or freedom to adhere to such religious organization in the form of worship as the individual may choose cannot be restricted by law." *See also, Braunfield v. Brown, supra,* at p. 607. If this particular religious practice may not be practiced, it would force petitioners to accept a creed and practice a form of

worship foreign to their present convictions but established as normative "civil religion" among the dominant Christian denominations, i.e. that is both a Christian and American duty to fight in just wars and pay for them. See Richey and Jones (Eds). *American Civil Religion,* (1974), at p. 106; Kraybill, *Our Star-Spangled Faith,* (1976), at p. 171. The government's position would be that of preferring one religion over another in violation of the establishment clause and would require petitioners to join a religion that is not consciously opposed to war. Scripture and tradition of the Christian community teaches the contrary however. Jesus, in the Sermon on the Mount, instructed all those who called themselves Christians, not to resist one who is evil but rather to love one's enemies (Mt. 5:38-48) and one cannot kill his enemy and love him at the same time. These precepts were followed by the early Christians until they were conquered by Constantine in 313 A.D., and henceforth they learned to fight Caesar's wars and pay his taxes. Durland, *No King But Caesar? A Catholic Lawyer Looks at Christian Violence,* (1975), at pp. 1-96. In the birth of the Religious Society of Friends, this biblical precept was revitalized by George Fox.

C. A Constitutional Right Takes Precedence Over an Internal Revenue Service Regulation.

Finally, the petitioners query whether the protection of the free exercise and establishment clauses of the United States Constitution are in effect inapplicable to the rules and regulations of the Internal Revenue Code in the absence of a statutory authorization? If this Court refuses this writ and thereby affirms the holdings of the lower courts, it will be so. The joy which filled all those refugees who came to this country during a devastating "war for human rights" will be extinguished. The right to be a conscientious objector to all wars will be quelled by the compulsion to pay for the same wars with one's money.

History reports from the records of the Hebrew Scriptures that Israel demanded a king so that they might be like all the nations and that their king might govern them and go out before them and fight their battles. Samuel, the prophet, told this to God and God told Samuel that the Israelites had rejected him as king and that Samuel should show the Israelites the ways of the political king who would reign over them henceforth. So Samuel told the people the words of God. He said:

> "These will be the ways of the (political) King who will reign over you: He will take your sons and appoint them to his chariots and to be his horsemen, and to run before his chariots; and he will appoint for himself commanders of thousands and commanders of fifties, and some to plow his ground and to reap his harvest, and to make his implements of war and the equipment of his chariots. He will take your daughters to be perfumers and cooks and bakers. He will take the best of your fields and vineyards and olive orchards and give them to his servants. He will take the tenth of your grain and of your vineyards and give it to his officers and to his servants. He will take your menservants and maidservants and the best of your cattle and your asses, and put them to his work. He will take the tenth of your flocks and you shall be his slaves. And in that day you will cry out because of your King, whom you have chosen for yourselves; but God will not answer you in that day." (I Sam. 8:10-18).

This government professes to be under God, but what Samuel warned of has happened over and over again when the ways of the king are the ways of war. Our taxes for war have amounted to much more than a tenth of our income and before the war economy consumes us all, let this Court hear us out.

CONCLUSION

Wherefore, the petitioners ask this Court to grant the writ to test the government's procedures in the present case on matters of fact and matters of law and determine whether the activity as presented was restricted or abridged by the First Amendment to the Constitution of the United States.

For these reasons, a writ of certiorari should be issued to review the judgment and opinion and order of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

William R. Durland
Attorney for Petitioners

APPENDIX

APPENDIX I — OPINION AND JUDGMENT AND ORDER OF THE UNITED STATES TAX COURT

UNITED STATES TAX COURT

BRUCE B. GRAVES and RUTH K. GRAVES, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

T.C. Memo. 1976-353

Docket No. 5057-75 Filed November 22, 1976

Bruce B. Graves, pro se.

Peter M. Ritteman, for the respondent.

MEMORANDUM OPINION

DAWSON, *Chief Judge:* This motion for judgment on the pleadings was assigned to and heard by Special Trial Judge John H. Sacks. The Court agrees with and adopts his opinion which is set forth below.[1]

OPINION OF THE SPECIAL TRIAL JUDGE

SACKS, *Special Trial Judge:* This case is presently before the Court on respondent's motion for judgment on the pleadings filed January 20, 1976, pursuant to Rule 120, Tax Court Rules of Practice and Procedure.

1. Since this is a pre-trial motion for judgment on the pleadings and there is no genuine issue of material fact, the Court has concluded that the post-trial procedures of Rule 182, Tax Court Rules of Practice and Procedure, are not applicable in these particular circumstances. This conclusion is based on the authority of the "otherwise provided" language of that rule.

Appendix I

Respondent determined a deficiency in petitioners' joint Federal income tax for the taxable year 1973 in the amount of $4,051.[2] The underlying question for determination is whether petitioners are entitled to a fifty percent "war tax credit" for the taxable year at issue on the ground that payment of such a tax would compel them to violate their consciences, religious beliefs, and moral convictions.[3]

Petitioners reside in Ypsilanti, Michigan. They have long been active Quakers, and they adhere devotedly to the principles of total nonviolence espoused by the Society of Friends. Petitioner Bruce B. Graves' status as a "conscientious objector" for purposes of the Selective Service system has been recognized officially since 1952. On their joint Federal income tax return for 1973, petitioners claimed a war tax credit of $4,051, which credit was disallowed upon audit by respondent as having no statutory

2. On their joint Federal income tax return for the year 1973, petitioners showed a gross tax liability of $8,102. This liability was shown as having been satisfied by withholding taxes in the amount of $5,560, and by a check, bearing a conditional endorsement, in the amount of $2,542. Petitioners claimed a war tax credit of fifty percent of the gross tax shown, and, accordingly, requested a refund in the amount of $4,051. Respondent then determined a deficiency against petitioners in the amount of $4,051 by measuring the difference between the tax liability as *shown* by petitioners (i.e., $4,051) and the tax liability as *determined* by respondent (i.e., $8,102). Respondent placed this $4,051 differential in a special credit balance account where it remains pending the outcome of this proceeding. If respondent is sustained, the credit balance will offset exactly the additional assessment. Alternatively, if petitioners' position is upheld, the credit balance will be refunded to them. In neither instance will petitioners have to remit any additional *taxes* for 1973.

3. Petitioners specifically abjure a posture of objection to *particular* wars, such as the recent involvement of the United States in Vietnam and Southeast Asia. Rather, their protestations are aimed at ALL war, and preparations therefor, since these "involve injuring or killing human beings."

Appendix I

basis in the Internal Revenue Code of 1954.[4] With that determination, we are constrained to agree.[5]

Petitioners' primary contention herein is that a forcible requirement to pay Federal taxes supportive of military activity would violate their pacifist religious beliefs in contravention of their right to the free exercise of such beliefs as secured to them by the First Amendment to the United States Constitution.[6] Without question, these are serious charges, and the gravity of petitioners' contentions is underscored by the fact that they have been made by individuals whose religious sincerity and devotion to principle can be neither doubted nor gainsaid. Nevertheless, they are charges which have been considered at great length and with equal devotion to principle by this Court on several prior occasions. See *Lorna H. Schedie, supra, Susan Jo Russell,* 60 T.C. 942 (1973); and *Abraham J. Muste,* 35 T.C. 913 (1961).

As early as 1961, this Court in *Muste, supra,* stated (at 918, 919) that, "* * * within the intendment of the first amendment, the Internal Revenue Code, in imposing the income tax and requiring the * * * payment of tax, is not to be considered as restricting an individual's free exercise of his religion." Although a tax under *some circumstances* may so contravene the

4. All Code references herein are to the Internal Revenue Code of 1954, as amended.

5. In making our determination in this case, we do not find it necessary to reach the "standing" question, which has been addressed on other occasions by this Court. See *Lorna H. Scheide,* 65 T.C. 455 (1975) and *Robert L. Anthony,* 66 T.C. 367 (1976).

6. As an ancillary contention, petitioners also argue that the payment of taxes such as are here at issue would constitute criminal complicity within the purview of those principles laid down by the International Military Tribunal at Nuremberg, Germany. The validity of this argument was rejected in *John David Egnal,* 65 T.C. 255 (1975).

guarantee of the first amendment so as to be unconstitutional,[7] a taxing statute is *not* contrary to the provisions of the first amendment unless it *directly* restricts the free exercise by an individual of his religion. Thus, in *Muste*, we said (at 919):

> * * * [T]he *Constitution* does not relieve a pacifist or conscientious objector of the *duty to pay taxes*, even though they may be used for war or for preparation for defense [Emphasis supplied.][8]

Similar views have been expressed emphatically in other court decisions wherein taxpayers made the same contentions with respect to the issue of the free exercise of religion as are made here. In *Autenrieth v. Cullen*, 418 F.2d 586 (9th Cir. 1969), cert. denied 397 U.S. 1036 (1970), the Ninth Circuit stated, in regard to such views:

> * * * [W]e hold that nothing in the Constitution prohibits the Congress from levying a tax upon

7. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). *Murdock* involved the validity of a municipal ordinance requiring religious colporteurs to pay a license tax as a condition to the pursuit of their activities. The Court, per Douglas, J., wrote that, "* * * [the flat license tax] restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise." *Murdock, supra*, at 114. The Federal income tax herein does not present this problem of an impermissible prior restraint.

8. Petitioners, in attempting to distinguish *Muste*, premise their argument upon an assumption analagous to that utilized by petitioner in *Muste*. This assumption is that the *Constitution itself* is the source for the right of a pacifist or conscientious objector to be safeguarded from a requirement of military service. That this assumption is erroneous was pointed out by the Court in *Muste*, for it is well established that no man has a *Constitutional* right to be free from call to military service and it is only by virtue of *acts of Congress* that conscientious objectors are exempt in whole or in part from military service.

(Cont'd)

> all persons, regardless of religion, for support of the general government. The fact that some persons may object, on religious grounds, to some of the things that the government does is not a basis upon which they can claim a constitutional right not to pay a part of the tax. *Kalish* * * * [*v. United States*, 411 F.2d 606 (9th Cir. 1969), cert. denied 396 U.S. 835 (1969)], is analogous.
>
> The Income Tax Act does not 'aid one religion, aid all religions, or prefer one religion over another.' Nor does it punish anyone 'for entertaining or professing religious beliefs or disbeliefs.' (Mr. Justice Black, in Everson v. Board of Education, 1947, 330 U.S. 1, 15-16 * * *) It taxes plaintiffs like all others, because they are citizens or residents who have taxable income. On matters religious, it is neutral. If every citizen could refuse to pay all or part of his taxes because he disapproved of the government's use of the money, on religious grounds, the ability of the government to function could be imparied or even destroyed. See, for example, Crowe v. Commissioner * * *, 8 Cir., 1968, 396 F.2d 766, where a taxpayer declined to pay his income tax because he objected to being made 'to contribute to the welfare of people who made no

(Cont'd)

The fallacy of petitioners' premise is further illustrated by the leading case on conscientious objection, *United States v. Seeger*, 380 U.S. 163 (1965). In *Seeger*, which petitioners cite in support of their claim, the Supreme Court, in a unanimous decision, expressly recognized the *statutory* underpinnings of conscientious objection, by recounting the history of *legislative* action in connection therewith from colonial times through World War II.(See *Seeger* at 169-173.)

> effort to support themselves.' There are few, if any, governmental activities to which some person or group might not object on religious grounds. [418 F.2d at 588, 589]

Despite the overwhelming weight of prior contrary authority, petitioners adhere to their position, and in support thereof, they cite *American Friends Service Committee v. United States*, 368 F. Supp. 1176 (E.D. Pa. 1973) revd. 419 U.S. 7 (1974). Their reliance, however, on this case is misplaced. *American Friends Service Committee*, insofar as it is pertinent to this proceeding, involved an action for injunctive relief by two Quakers challenging the application of the withholding method of tax collection to them. Although the District Court did hold that the withholding method was unconstitutional *as applied*, the Supreme Court reversed upon the ground that the Anti-Injunction Act, 26 U.S.C. Section 7421(a), barred petitioners' claim. For reasons that should be clear, petitioners' reliance on Justice Douglas' lone dissenting opinion is also without merit.

Therefore, although we do not doubt the sincerity of petitioners' beliefs, it is the function of this Court to *interpret* the law as made by *Congress* within the decisional parameters of *both* this Court and other courts. As was stated in *Farmer v. Rountree*, 149 F. Supp. 327 (D. Tenn. 1956), affd. per curiam 252 F.2d 490 (6th Cir. 1958), cert. denied 357 U.S. 906 (1958):

> To grant taxpayers the relief they seek, the Court would be required to substitute its judgment for that of the other two branches of the Government by declaring that the foreign and military policies of the nation were in reality for illegal and aggressive war and not for the legitimate purpose of national security or for the preservation of the essential interests of the United States. The judiciary not only does not

> have the proper criteria or the technical competence to make such determinations, but [also] it is without the means of obtaining the varied and complete facts which would be required to draw a conclusion. * * * [149 F. Supp. at 329]

Thus, however sympathetic we may be to the arguments made by petitioners, the legal theories underlying them find no support in the opinions of this Court. Accordingly, our only recourse is to grant respondent's motion for judgment on the pleadings.

An appropriate order and decision will be entered.

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

BRUCE B. GRAVES and
RUTH K. GRAVES,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 5057-75

ORDER AND DECISION

Pursuant to the Memorandum Opinion [T. C. Memo. 1976-353] filed herein on November 22, 1976, it is

Appendix I

ORDERED: That respondent's motion for judgment on the pleadings is granted, and it is

ORDERED AND DECIDED: That there is a deficiency of $4,051 in petitioners' Federal income tax for the year 1973.

s/ Howard A. Dawson, Jr.
Howard A. Dawson, Jr.
Chief Judge

Entered: Nov. 23, 1976

APPENDIX II — OPINION AND JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRUCE B. GRAVES AND RUTH K. GRAVES,

Petitioners-Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellee.

No. 77-1188

BEFORE: PHILLIPS, Chief Judge, LIVELY, Circuit Judge, and PECK, Senior Circuit Judge

The petitioners appeal from a decision of the Tax Court upholding an income tax deficiency for the year 1973. The petitioners claimed a "war tax credit" of 50% of the tax due as disclosed by their joint 1973 return. The petitioners are Quakers who adhere to the principle of total nonviolence. The question which they raise on appeal is stated in their brief as follows: Would compelling the petitioners to pay taxes to support American military involvement in Vietnam be violative of the Free Exercise Clause of the First Amendment to the Constitution of the United States?

The appeal has been referred to a panel of the Court pursuant to Rule 9, Rules of the Sixth Circuit. The levying of taxes is entrusted to the legislative branch of government by our Constitution and general attacks on the taxing scheme adopted by Congress do not raise justiciable issues. *Farmer v. Rountree,*

Appendix II

149 F. Supp. 327 (M.D. Tenn. 1956), *aff'd.*, 252 F.2d 490 (6th Cir.), *cert. denied*, 357 U.S. 906 (1958). Presented as a constitutional issue the arguments of the petitioners are no more compelling. The income tax is neutral as to religion. It is levied uniformly against persons of various beliefs, and those of no belief. The fact that Congress and the executive branch choose to spend a portion of the revenues of the government for military operations reflects political decisions in areas specifically delegated to them by the Constitution. The requirement that petitioners, along with others having taxable income, pay taxes thereon does not constitute an unreasonable burden on the free exercise of their religious beliefs.

As did the Tax Court, we accept without question the sincerity of petitioners' beliefs and arguments. Nevertheless, we conclude that it is manifest that questions upon which decision of this case depends are so unsubstantial as not to require further argument. Rule 9(b)3, Rules of the Sixth Circuit. The decision of the Tax Court is affirmed.

ENTERED BY ORDER OF
THE COURT

s/ John P. Hehman
Clerk

FILED
JUL. 7, 1978
JOHN P. HEHMAN, Clerk

APPENDIX III — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT DENYING PETITIONERS' PETITION FOR REHEARING

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRUCE AND RUTH GRAVES

Appellants-Petitioners

vs.

COMMISSIONER OF INTERNAL REVENUE

Appellee-Respondent

No. 77-1188

BEFORE: PHILLIPS, Chief Judge; LIVELY, Circuit Judge; and PECK, Senior Circuit Judge.

No judge in active service with the court having requested a rehearing *en banc* the petition for rehearing filed by the petitioners-appellants has been referred to the panel which rendered the decision of the Court.

Upon consideration of the petition for rehearing the court concludes that all issues raised therein were fully considered upon the original submission of this appeal.

The petition for rehearing is denied.

ENTERED BY ORDER OF
THE COURT

FILED
SEPT. 19, 1978
JOHN P. HEHMAN, Clerk

s/ John P. Hehman
Clerk